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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,554	06/26/2003	Robert M. Brustowicz	CHD-006	5300

7590 06/07/2006

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EXAMINER
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MCCORKLE, MELISSA A

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/606,554

Applicant(s)

BRUSTOWICZ, ROBERT M.

Examiner

Melissa A. McCorkle

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 6-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Vaillancourt (5,591,138). Vaillancourt discloses an on demand needle retaining and locking mechanism for use in intravenous needle-catheter assembly (fig 3), said mechanism comprising a rotatable on demand needle safety container comprised of an elongated linear shell having at least one discrete wall (fig 3) and set dimensions and configuration, said elongated shell being radially rotatable on demand, an open end in said shell adapted for passage there through of the piercing end of piercing needle (18), an internal spatial volume within said shell sufficient for containing and securing the entirety of a piercing needle (fig 6), a sized solid tab member (21) disposed on and extending radially from the exterior surface of said shell at an aligned position adjacent to, but axially removed from, said open end (fig 2) of said shell, a needle housing unit adapted for mounting upon and sliding axial movement at will over said rotatable needle safety container, said needle housing unit being comprised of a slide casing (fig 9 and fig 10), a flash chamber for holding the non-piercing end of a piercing needle (fig 29 and fig 27), a piercing needle held at its non-piercing end by said flash chamber, and a configured spool section comprising a semi-circular flange, a tab-engagement segment,

and at least one sized notch for on-demand engagement with said tab member and being able to engage, retain, and disengage said tab member of said needle-safely container on demand; a hollow collar contiguously aligned with and rotably attached to an open end of said linear shell (fig 7, 8, 30)), said rotatable collar having at least one wall (fig 8), having two open ends adapted for passage therethrough of a piercing needle (fig 30), a solid tab member which is disposed on an exterior surface of said wall (fig 3) and at least one pre-positioned radial cutout in said wall which is radially positioned and aligned with said solid tab member (fig 3).

3. Vaillancourt shows the needle-catheter assembly as stated above, wherein said said rotatable on-demand needle safety container further comprises a plurality of positioned radial and axial cutouts in said wall of said shell, and said needle housing further comprises a guide member sized for aligned radial and axial movement at will into and out of said pre-positioned cutouts in said shell wall (fig 3 and fig 14), and wherein said pre-positioned cutouts include at least one axial groove which is linearly aligned for passage of said guide member (fig 14 and fig 3), wherein said needle housing further comprises a configured spool section comprising a tab-engagement segment and at least one sized notch for on demand engagement (fig 1-5) with said tab member of said needle-safety container, said spool portion being alignable at will with said tab member and being able to engage, retain, and disengage said tab member of said needle-safety container on demand (fig 3) a piercing needle having piercing and non piercing ends (17), wherein said configured spool section includes a pair of sized notches (fig 3).

***Response to Arguments***

4. Applicant's arguments filed 3/3/06 have been fully considered but they are not persuasive. Applicant argues that the Vaillancourt reference shows more features than necessary for the present invention. It is noted that the term "comprising" which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements. Each structure of the device as claimed is provided for in the Vaillancourt reference as stated above, as well as performing the same function, therefor all claim limitations have been met.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa A. McCorkle whose telephone number is (571) 272-2773. The examiner can normally be reached on Monday - Friday, 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3763

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melissa A McCorkle  
Examiner  
Art Unit 3763



NICHOLAS D. LUCCHESI  
SUPERVISOR OF EXAMINERS  
ART UNIT 3763